(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

CR.APPEAL NO. 757 /2002

APPELLANT : Goverdhan Ram Sahu
S/o Sukh Ram Sahu
Aged about 26 years,
R/o village:'Khatti',
P.S.Magarlod,Teh.:Kurud,
Distt. Dhamtari (CG).

(In Jail)

VERSUS

RESPONDENT : State of Chhattisgarh
Through P.S.:Magarlod,
Distt. Dhamtari.

.....Advocate

R. to D.R.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

AF-R'

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

Criminal Appeal No.757 of 2002

Goverdhan Ram Sahu

- Versus -

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
JUDGE
03-2-2006

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

Sd/-
Dhirendra Mishra
Judge

POST FOR JUDGMENT ON 6TH FEBRUARY, 2006

Sd/-
L.C. Bhadoo
Judge

(41)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.757 of 2002

Goverdhan Ram Sahu

- Versus -

State of Chhattisgarh

Present: -

Mr. T.K. Tiwari, Advocate: For the appellant.

Mr. Akhil Mishra & Mr.M.P.S. Bhatia, Panel Lawyers: For the respondent/ State

---

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR.DHIRENDRA MISHRA, JJ.

J U D G M E N T

(Delivered on 06th February, 2006)

The following judgment of the Court was delivered by *L.C. Bhadoo, J*:-

1. By this appeal under Section 374 (2) of the Code of Criminal Procedure appellant Goverdhan has questioned the legality of judgment of conviction and order of sentence dated 17th July, 2002 passed by learned Additional Sessions Judge, Dhamtari in Sessions Trial No.7/2001 whereby learned Additional Sessions Judge after holding the accused/ appellant Goverdhan guilty for commission of offence under Sections 302 & 201 of the Indian Penal Code for committing murder of his wife Tomin Bai sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo rigorous imprisonment for one year; and R.I. for 5 years and to pay a

42

fine of Rs.2,000/-, in default of payment of fine to further undergo rigorous imprisonment for one year respectively.

2. The prosecution case, in brief, is that Radha Bai was married to the accused/appellant Goverdhan, as she was not able to conceive, therefore, in the year 1999 Tomin Bai (since deceased) was married with accused/appellant. As Tomin Bai was not allowing the accused/appellant to have physical relations with her, therefore, in the intervening night of 19th & 20th September, 2000 when Tomin Bai was sleeping in her room the accused/appellant went to her room and pressed her neck with the hands and she died as a result of asphyxia due to strangulation. In order to cause disappearance of the evidence and to create evidence that Tomin Bai has died on account of consumption of poison, the accused/appellant put the pesticide in the mouth of Tomin Bai. Further case of the prosecution was that the accused/appellant along with his family members used to harass and subject Tomin Bai with cruelty for not bringing sufficient dowry. Accused Goverdhan gave false information to the police that Tomin Bai has died on account of consumption of poison. Based on the report, Station House Officer initiated investigation and reached to the scene of occurrence, after giving notice (Ex.P-1) to the Panchas prepared the Panchnama (Ex.P-2) of the body of deceased Tomin Bai. As PW-1 Chandulal, father of deceased Tomin Bai raised suspicion about the cause of death of Tomin Bai, therefore, it was decided to send the body of Tomin Bai for postmortem examination and same was sent for postmortem examination to the Community Health Centre, Magarload where Dr. K.K.Soni (PW-9) along with Dr. Navratan conducted postmortem on the body of deceased Tomin Bai on 21.9.2000 at about 11.30 a.m. and found that thyroid cartilage of Tomin

Bai was ruptured, there was bruising and ecchymosed on the neck, bruising on deeper tissues, larynx & pharynx were congested, lungs, liver, spleen, kidney were congested, bloody mucous was coming out from the mouth & nostrils and doctor opined that mode of death of Tomin Bai was asphyxia as a result of strangulation, may be closure of air passage by external pressure on the neck and the death is homicidal in nature.

3. On receiving this postmortem report (Ex.P-9), Station House Officer Shri K.R.Bhoi, Police Station Magarload registered the F.I.R. (Ex.P-4) on 24.9.2000 for commission of offence under Section 302 of the I.P.C. Site plan (Ex.P-5) of the place of occurrence and where the body of deceased Tomin Bai was lying was prepared by the Investigating Officer. During police custody accused/appellant Goverdhan gave memorandum (Ex.P-6) under Section 27 of the Evidence Act regarding the place where he kept the bottle of pesticide and in pursuance of that he got recovered one plastic bottle '*Parchlor*' under Ex.P-7. One plastic cap of the bottle in which smell of pesticide was present was also taken into possession under Ex.P-8.

4. After completion of investigation, charge sheet was filed against the accused/appellant Goverdhan for commission of offence under Sections 302, 201 & 498-A of the I.P.C. and also against Sukharam, father of accused Goverdhan, Smt. Ramhala Bai, mother of accused Goverdhan, Hemlal, brother of accused Goverdhan & Smt. Radha Bai, first wife of accused Goverdhan for commission of offence under Section 498-A of the Indian Penal Code in the Court of learned Chief Judicial Magistrate, Dhamtari who in turn, committed the case to learned Sessions Judge, Raipur, from where learned Additional Sessions Judge, Dhamtari received the case on

transfer for trial. Learned Additional Sessions Judge after hearing learned counsel for the parties and perusal of record was of the opinion that offence under Sections 302, 201 & 498-A of the Indian Penal Code against the accused/appellant Goverdhan and offence under Section 498-A of the Indian Penal Code against Sukharam, Smt. Ramhala Bai, Hemlal & Smt. Radha Bai were prima-facie made out, therefore, he charged the accused persons for the aforesaid offences. However, the accused persons abjured the charge.

5. The prosecution in order to prove the charge against the accused persons examined nine witnesses. On the other hand, learned Additional Sessions Judge recorded the statements of the accused persons under Section 313 of the Cr.P.C. in which they denied the prosecution evidence appearing against them. Accused Goverdhan has stated that he is innocent, he had not committed murder of Tomin Bai and other persons used to come to Tomin Bai.

6. Learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused persons convicted and sentenced the accused/appellant Goverdhan in the manner as mentioned in Para-1 of this judgment, however he acquitted the accused Sukharam, Smt. Ramhala Bai, Hemlal & Smt. Radha Bai from the charge of Section 498-A of the Indian Penal Code.

7. We have heard Mr. T.K. Tiwari, learned counsel for the accused/appellant and Mr. Akhil Mishra & Mr. M.P.S. Bhatia, Panel Lawyers on behalf of the State/respondent.

8. It is an admitted position that in this case there is no direct evidence and the case against the accused/appellant rests on the circumstantial evidence and in order to convict an

45

accused based on the circumstantial evidence as per decisions of the Hon'ble Apex Court in the matters of **Padala Veera Reddy Vs. State of A.P. and others** reported in **AIR 1990 SC 79; Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **AIR 1984 SC 1622** and in other decisions, the circumstantial evidence must satisfy the following tests:

a. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

b. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

c. the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

d. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should be not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

9. Learned counsel for the accused/appellant argued that based on the above tests the prosecution has utterly failed to prove the offence against the accused/appellant for which he has been convicted by the trial Court. He argued that as per postmortem report & prosecution case, deceased Tomin Bai died on account of asphyxia as a result of strangulation, but as per postmortem report & medical evidence no external

46

injury was found on the body of deceased, whereas as per prosecution case accused/appellant after pressing both the hands of deceased with the legs pressed the neck of deceased Tomin Bai with the hands. As per doctor's evidence thyroid cartilage was found ruptured, in such a case there must have been external injury on the neck and as no injury was found on the neck of deceased, therefore, that falsify the prosecution case. He further argued that when accused/appellant tried to press the neck of deceased, in ordinary course, the deceased must have tried to save herself and in that process she ought to have received injuries, but no injuries were found on her body. He also argued that in the mouth of deceased Tomin Bai, pesticide, a poisonous substance, was found and as per doctor's report viscera were preserved for chemical examination but no report has been placed on record by the prosecution, therefore, the defence case that Tomin Bai consumed poison cannot be ruled out. He further argued that as per postmortem report finger nails were bluish and that can only be due to consumption of poison. Learned counsel for the accused/appellant also filed written submission in support of his arguments.

10. On the other hand, learned Panel Lawyers for the State/respondent supported the judgment of the trial Court.

11. In order to appreciate the arguments advanced by learned counsel for the accused/appellant if we look into the postmortem report (Ex.P-9) in which it has been mentioned that on external examination the body was found cyanosed and swollen, ear and finger nails were bluish in colour, bloody mucous was coming out from the mouth & nostrils, eye-conjunctive congested, pupil dilated, chest abdomen genitalia

limb neck has swollen, congested blackish in colour, on neck ligature mark is not seen only seen swelling blackish congested, rupture of thyroid cartilage and muscle swelling, bleeding from ear. On internal examination doctor found that on the neck ecchymosed on sub-cut tissue, bruising and ecchymosed on the neck, on cut section, bruising on deeper tissues, larynx & pharynx were congested, heart is empty, large veins are full of blood and he opined that "*mode of death is asphyxia due to strangulation, may be closure of air passage by external pressure on the neck and nature of death is homicidal.*"

12. PW-1 Chandulal, father of deceased Tomin Bai, has stated that since there was no child from the first wife of accused Goverdhan that is why he married with his daughter Tomin Bai. He further stated that Tomin Bai gave birth to a female child, however, that child died on account of weakness. He went to the accused house and brought Tomin Bai to his house on Pola festival. Tomin Bai remained at his house for 15-17 days and thereafter she was sent to the accused house. After 4-5 days accused Hemlal came to his house and informed that Tomin Bai has consumed poison and she was taken to Marload. When he enquired from the villagers about the death of his daughter, they told that one day before the incident accused Goverdhan had beaten Tomin Bai, therefore, she called the Panchayat of village. PW-4 Laduram has stated that on the Dusshera day Tomin Bai came to his house and informed him that her in-laws are quarrelling with her, therefore, you come and settle the matter, on which he alongwith Shivprasad, Awadhram, Sonau, Somaru etc went to the accused house and advised them not to quarrel and on the second day at about 5.00 a.m. Hemlal came to him and informed that Tomin Bai has consumed

poison and she was vomiting, on which he went to the accused house. Smell of pesticide was coming from the vomit. PW-5 Awadhram has corroborated the above evidence of PW-4 Laduram. PW-9 Dr. K.K. Soni has stated that he along with Dr. Navratan conducted postmortem on the body of deceased Tomin Bai and on external examination of the body found that her ears & nails were bluish, mucous blood was present in the mouth & nose, eyes were congested, pupil were dilated and there was no visible external injury, but her neck skin was brown blackish and swelling was present. Thyroid cartilage was ruptured and clotted blood was present in the ear. On internal examination doctor found that thyroid cartilage was ruptured, there was blood in the brain, kidney spleen, both the chambers of heart were empty, there was blood in the larger intestine, tissues of nose & ear were found fractured, there was half digested food in the stomach but there was no smell of any poisonous substance in the stomach. The food, which was found in the stomach of the deceased, was preserved for sending the same for chemical examination and in his opinion the death was on account of asphyxia as a result of strangulation.

13. Therefore, we have to appreciate the evidence in the above background. It is admitted position that when accused Goverdhan married with Tomin Bai, he was already married, as there was no issue from the first wife, therefore, he married with Tomin Bai. Thereafter, Tomin Bai gave birth to a female child who died due to weakness and as per evidence of Chandulal (PW-1), father of deceased, PW-4 Laduram & PW-5 Awadhram the relations of accused Goverdhan with deceased Tomin Bai were not cordial. When accused and his family members harassed Tomin Bai, she approached PW-4 Laduram & PW-5 Awadhram for settling the matter and they

(49)

went to the accused house and advised them not to quarrel. Therefore, in the light of this background the medical evidence and doctor's evidence has to be appreciated. It is true that as per medical evidence no external injury was found on the body of deceased, but it is definite that thyroid cartilage was found ruptured, there was swelling on the neck, bloody mucous was present in mouth & nostrils, clotted blood was present in the ears, there was bruising and ecchymosed on the neck and there was bruising of deeper tissues also. PW-9 Dr. K.K. Soni who has proved the above findings of postmortem examination has not been cross-examined on these aspects. Doctor has further stated that in the stomach there was no smell of poisonous substance. But the doctor has not been cross-examined by the defence counsel on this aspect regarding consumption of poison by deceased Tomin Bai. He was also not cross-examined on the aspect that whether without any visible external injury rupture of thyroid cartilage was possible and without cross-examining on these aspects merely arguing that no external injury was found on the body of deceased based on the medical jurisprudence that doctor's opinion is not correct, the arguments advanced by learned counsel for the accused/appellant cannot be accepted. The Hon'ble Apex Court in the matter of **State of Madhya Pradesh Vs. Sanjay Rai** reported in **2004 SAR (Criminal) 445 Supreme Court** has held that "*unless the opinions of authors are put to the expert examined in the case the evidence of expert cannot be discredit.*" The Hon'ble Apex Court in the matter of **Sunderlal Vs. The State of Madhya Pradesh** reported in **AIR 1954 SC 28**, disapproved of Judges drawing conclusions by relying upon such passages in the absence of their being put to medical witnesses. In the matter of **Bhagwan Das and**

(50)

another Vs. State of Rajasthan reported in **AIR 1957 SC 589** the Hon'ble Apex Court has held that '*though opinions expressed in text books by specialist authors may be of considerable assistance and importance for the Court in arriving at the truth, cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a Court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value cannot always be considered to be authoritatively binding, even to dispense with the actual proof otherwise reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or placed on higher pedestal than the opinion of an expert examined in Court and the weight ordinarily to which it may be entitled to or deserves to be given.*" Therefore, the arguments advanced by learned counsel for the accused/appellant that since no external injury was found on the body of deceased Tomin Bai, therefore, the evidence of Dr. K.K.Soni (PW-9) cannot be accepted is baseless, as the doctor who appeared before the Court was not cross-examined on this aspect. He was the better person to explain because he was the person who infact examined the body of deceased at the time of postmortem and was in a position to reply the arguments advanced by learned counsel for the accused/appellant. The facts and opinion of the doctor is based on his personal examination of the body, as there was a rupture of thyroid cartilage, bloody mucous was present in the mouth & nose, clotted blood was also present in the ear, swelling was present on the neck and even bruising and ecchymosed was present on the neck and there was bruising on the deeper tissues. All these factors are suggestive of throttling and

based on that doctor (PW-9) has given his opinion. Therefore, mere absence of any ligature mark on the neck or any external injury on the body of deceased, the above evidence of the doctor cannot be brushed aside, moreover, the above medical evidence has to be appreciated in the light of background of the case, as has been mentioned above, that the relations of Tomin Bai and accused Goverdhan were not cordial and even one day before the incident a Panchayat of villagers was convened at the request of deceased Tomin Bai, as per evidence of PW-4 Laduram & PW-5 Awadhram.

14. Now coming to the argument advanced by learned counsel for the accused/appellant that deceased Tomin Bai died on account of consumption of poison i.e. pesticide and he tried to substantiate his argument saying that deceased's nails became bluish, both the chambers of heart were found empty & congested and as per medical jurisprudence all these symptoms are suggestive of consumption of poison. But as per doctor's evidence no smell of poison was present in the stomach and there was no smell of poison in the food which was found in the stomach, shows that poison was not consumed by Tomin Bai rather that was put in the mouth of Tomin Bai in order to show that deceased has consumed poison. The consumption of poison is ruled out from the fact that thyroid cartilage was found ruptured and there was no explanation by the accused/appellant that how that had happened. Because the death was in the house of accused, therefore, accused was the best person to explain as to how the death took place in the house. Even the finger nails can become bluish on account of none supply of oxygen, therefore, only on the ground of symptoms just like that bloody mucous was present in the mouth & nostrils and the

finger nails were bluish, it cannot be presumed that same was on account of consumption of poison. It is true that chemical examination report of the food material, which was preserved, could have been a great assistance to ascertain the fact whether the poison was present in the stomach or not, but as the same has not been produced by the prosecution even then looking to the facts of this case that thyroid cartilage was found ruptured, there was bruising and ecchymosed on neck and on the deeper tissues, the evidence of doctor (PW-9) can be accepted without the chemical examination report and the doctor has stated that no smell of poison was coming out from the stomach of the deceased. In the circumstances, non-production of the report cannot be held to be fatal to the prosecution case. Even at the instance of the accused, as per information given by the accused under Ex.P-6, plastic bottle of poison was recovered.

15. Moreover, perusal of Panchnama (Ex.P-2) of the body of deceased Tomin Bai shows that PW-1 Chandulal, father of deceased Tomin Bai raised suspicion even at the time of preparation of Panchnama and on the inspection of site it was found that floor of the room of Tomin Bai, where Tomin Bai was found dead, was plastered with the dung and on enquiry the accused/appellant informed that as Tomin Bai vomited, therefore, floor of the room has been plastered. Plastering of the floor of the room of deceased Tomin Bai before arrival of the police suggests that poison, which was put in the mouth of Tomin Bai, must have been splashed on the ground and in order to cause disappearance of that effect the floor was plastered. This circumstance also shows that the poison was put in the mouth of the deceased in order to show that she had consumed poison.

16. In view of the foregoing discussion, we are of the considered opinion that deceased Tomin Bai died on account of strangulation and thereafter in order to mislead and cause disappearance of the evidence of murder the poison was put in the mouth of Tomin Bai and when poison splashed on the floor, same was plastered with the dung. Accordingly, we do not find any illegality or irregularity in the judgment of the trial court convicting and sentencing the accused/appellant under Sections 302 & 201 of the Indian Penal Code.

17. In the result, we do not find any merit in this appeal, therefore, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

06-2-2006

Roshan/-